

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

THERESA SIRRI MUBANG,

Petitioner,

v.

Civil Action No. 1:18-cv-181
(Kleeh)

WARDEN, HAZELTON SECURE
FEMALE FACILITY,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 25],
GRANTING MOTION TO DISMISS OR ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT [DKT. NO. 13], DISMISSING PETITION
[DKT. NO. 1], DENYING AS MOOT PETITIONER'S MOTION TO
DISMISS [DKT. NO. 20], AND STRIKING PETITIONER'S MEMORANDUM
FOR EMERGENCY SUMMARY JUDGMENT [DKT. NO. 22] AND FIRST
AND SECOND SUPPLEMENTS [DKT. NOS. 23, 24]

On September 24, 2018, pro se Petitioner, Theresa Sirri Mubang ("Petitioner"), filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 [Dkt. No. 1]. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred this matter to United States Magistrate Judge Michael J. Aloï ("Magistrate Judge") for initial screening and a report and recommendation. On January 22, 2020, the Magistrate Judge issued a Report and Recommendation ("R&R") [Dkt. No. 25] recommending that that Respondent's *Motion to Dismiss or Alternatively, Motion for Summary Judgment* [Dkt. No. 13] be granted and that Petitioner's case be dismissed with prejudice.

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The R&R also recommends that Petitioner's *Motion to Dismiss Respondent's Surreply or Rebuttal* [Dkt. No. 20] be denied as moot. The Magistrate Judge further recommends that Petitioner's *Memorandum in Support of Emergency Motion for Summary Judgment for Consideration and/or Transfer to a Residential Re-Entry Center ("RRC") and Home Confinement Pursuant to 28 U.S.C. § 2241 and the First Step Act as Amended* [Dkt. No. 22] be construed as a surreply, together with its first and second supplements [Dkt. Nos. 23, 24], and be stricken from the record.

The R&R specifically warned that the parties had "fourteen days from the date of service of this Report and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection" [Dkt. No. 25 at 22]. The R&R stated that the failure to file written objections would constitute a waiver of appellate review by the Circuit Court of Appeals [Id.]. It further stated that the failure to file written objections also relieves the Court of any obligation to conduct a de novo review of the issue presented [Id.]. See Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997); Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

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The R&R was issued on January 22, 2020, and mailed to Petitioner, via certified mail, on that same date [Dkt. No. 25-1]. Service of the R&R was accepted on January 27, 2020 [Dkt. No. 26]. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the Report and Recommendation in its entirety. The Court **ORDERS** that:

- 1) Respondent's *Motion to Dismiss or Alternatively, Motion for Summary Judgment* [Dkt. No. 13] be **GRANTED**;

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- 2) The Petition for writ of habeas corpus [Dkt. No. 1] be **DISMISSED WITH PREJUDICE**;
- 3) Petitioner's *Motion to Dismiss Respondent's Surreply or Rebuttal* [Dkt. No. 20] be **DENIED AS MOOT**;
- 4) Petitioner's *Memorandum in Support of Emergency Motion for Summary Judgment for Consideration and/or Transfer to a Residential Re-Entry Center ("RRC") and Home Confinement Pursuant to 28 U.S.C. § 2241 and the First Step Act as Amended* [Dkt. No. 22], and its first and second supplements [Dkt. Nos. 23, 24], be **STRICKEN** from the record; and
- 5) The matter be **STRICKEN** from the Court's active docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se Petitioner, certified mail, return receipt requested.

DATED: February 18, 2020



THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE